

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID CARROLL STEPHENSON,
Petitioner- Appellant,

v.

UNITED STATES OF AMERICA,
Respondent- Appellee.

CASE NO. C12-5581 RBL

(9TH CIR. NO. 12-35787)

ORDER DENYING CERTIFICATE
OF APPEALABILITY

[DKT. #10]

THIS MATTER is before the Court on limited remand by the Ninth Circuit to determine whether this Court should issue a Certificate of Appealability to Petitioner Stephenson [Dkt. #10; citing *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997)]. Mr. Stephenson has since filed his own Motion seeking a Certificate of Appealability [Dkt. #11].

The district court should grant an application for a Certificate of Appealability only if the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(3). To obtain a Certificate of Appealability under 28 U.S.C. § 2253(c), a habeas petitioner must make a showing that reasonable jurists could debate whether, or agree that, the petition should have been resolved in a different manner or that the issues presented were

adequate to deserve encouragement to proceed further. *Slack v. McDaniel*, 120 S.Ct. 1595, 1603-04 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

When the court denies a claim on procedural grounds, the petitioner must show that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 120 S.Ct. at 1604.

This court dismissed the petition as time-barred under 28 U.S.C. § 2244(d). The case was therefore dismissed on procedural grounds.

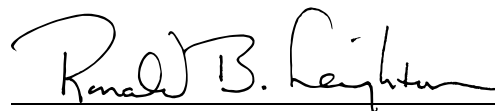
Petitioner's claim is that this court (and, presumably, the Ninth Circuit) lacks jurisdiction over him and that his conviction is "jurisdictionally void." [See, most recently, Dkt. # 11] He apparently claims that because this is so, the judgment against him never became final and, therefore, that the one year time limit of 28 U.S.C. § 2244(d) has not commenced running, much less expired.

There is nothing in the record that would support a conclusion that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.

The Petitioner's Motion for a Certificate of Appealability [Dkt. #11] is therefore DENIED, and this Court will not issue such a Certificate.

IT IS SO ORDERED.

Dated this 11th day of October, 2012.



Ronald B. Leighton
United States District Judge